

IN THE MATTER OF AN ARBITRATION

BETWEEN:

CITY OF OTTAWA

("the Employer")

AND:

IATSE, LOCAL 471

("the Union")

RE: LANDSDOWNE PARK POLICY GRIEVANCE
PRELIMINARY AWARD RE: CONSOLIDATION

SOLE ARBITRATOR:

Kevin M. Burkett

FOR THE EMPLOYER:

Jennifer Birrell - Counsel

FOR THE UNION:

David Jewitt - Counsel

PRELIMINARY AWARD

An issue has arisen as to whether I have jurisdiction over 17 individual grievances that the Union maintains give rise to the same issues and are otherwise related to the policy grievance that has been referred to this arbitration and coincidentally whether I should order consolidation of all of these grievances. In addition to challenging the relatedness of these grievances the Employer asserts that because the individual grievances have not been referred to this arbitrator, I am without jurisdiction to entertain them let alone order that they be consolidated with each other and with the policy grievance.

The Union relies on the Award of arbitrator Shime in re TDSB and CUPE Local 2002 Carswell 4762 in which the arbitrator did not order consolidation based on the fact that the grievances under consideration had been filed under three separate collective agreements but commented in obiter that a party that unreasonably refuses to consent to consolidation “negates the responsibilities of both of the parties to reasonably administer the collective agreement ... a responsibility buttressed by the purpose clause of the collective agreement in which the parties commit to provide prompt and equitable disposition of grievances”. The Union argues that Article 1.01 of the instant collective agreement, which commits the parties “to provide a procedure

for the prompt and fair settlement of grievances”, is of the same force and effect and thereby allows me to assume jurisdiction and order consolidation.

It is trite to observe that an arbitrator’s jurisdiction is conferred by the mutual agreement of the parties to refer the grievance or by the appointment of the appropriate government office. Neither has occurred with regard to the individual grievances that are at issue. Accordingly, I do not have jurisdiction over these grievances and, therefore, am not in a position to consider the consolidation request. Whereas the Union would be free to file a separate grievance claiming that the Employer’s failure to refer the individual grievances to the same arbitrator as had been assigned the policy grievance and to otherwise argue against consolidation constitutes a breach of Article 1.01 of the collective agreement, I am without jurisdiction.

If I had jurisdiction over the individual grievances I would be inclined to hear the policy grievance first but with the agreement of the parties that the evidence heard could be applied to the individual grievances. I would proceed in this manner because it would be the most efficient way to dispose of the policy grievance and because the disposition of the policy grievance might then facilitate the resolution of some or all of the individual grievances. If there were individual grievances left to be decided I would seek the agreement of the parties that the Union proceed with its best case(s), again with the evidence heard applicable to the remaining cases where relevant.

However, to repeat I have no jurisdiction over the individual grievances and, therefore, I am not in a position to deal with the Union's consolidation request.

DATED in Toronto, Ontario on this 16th day of March, 2017

Kevin Burkett

Kevin M. Burkett